

**Krouser v Ortiz**

2016 NY Slip Op 33149(U)

March 11, 2016

Supreme Court, Dutchess County

Docket Number: Index No. 2014/50889

Judge: Christine A. Sproat

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

102449

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

-----X  
JENNIFER KROUSER,

Plaintiff,

- against -

**DECISION & ORDER**

**Index No. 50889/2014**

ALEXANDER ORTIZ and MONIQUE ORTIZ,

Defendants.  
-----X

C. A. SPROAT, J.S.C.

The unopposed motion by plaintiff for partial summary judgment on the issue of liability for the happening of this motor vehicle accident is granted.

The Court has reviewed the Motion, Affirmation of George A. Kohl, II, Exhibits A-G, and the Affidavit of Service. Plaintiff has established that there are no triable issues of fact on the issue of liability in this rear end collision. Plaintiff was stopped at a stop light and was hit the rear by the defendant Alexander Ortiz. The defendant has failed to establish a non-negligent explanation for hitting the rear of plaintiff's vehicle with a water bottle rolling from the back seat to where the foot pedal was. "A rear-end collision with a stopped or stopping vehicle creates a *prima facie* case of liability with respect to the operator of the moving vehicle and imposes a duty on that operator to rebut the inference of negligence [by providing] a non-negligent explanation for the collision." (*Katz v. Masada II Car and Limo Services, Inc.*, 43 AD3d 876 (2nd Dept., 2007) citing *Niyazov v. Bradford*, 13 AD3d 501, 786 NYS2d 582; *Russ v. Investech Sec.*, 6 AD3d 602, 775 NYS2d 867; *Vecchio v. Hildebrand*, 304 AD2d 749, 750, 758 NYS2d 666; *McGregor v. Manzo*, 295 AD2d 487, 744 NYS2d 467.) The fact that plaintiff was stopped for traffic does not provide defendant driver with an adequate non-negligent explanation for rear-ending plaintiff. As plaintiff has set forth a *prima facie* case that defendant alone is liable for the accident, it is incumbent upon defendant to raise a triable issue of fact in order to defeat a motion for summary judgment. (See, CPLR 3212(b).)

This case is adjourned to December 2, 2016 at 9:30 a.m. for jury selection.

Submit Judgment.

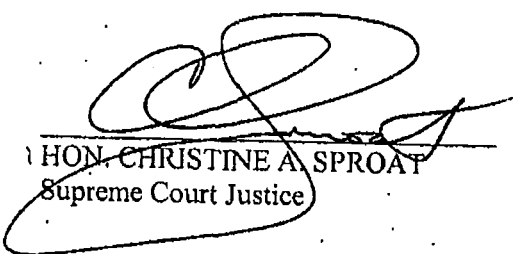
\* 2]

So Ordered.

Dated: March 11, 2016  
Poughkeepsie, New York

To: George A. Kohl, Esq.  
Finkelstein & Partners, LLP  
*Attorney for Plaintiff*  
1279 Route 300  
P.O. Box 1111  
Newburgh, NY 12551

Grogan & Souto  
*Attorneys for Defendants*  
14 Scotchtown Avenue  
P.O. Box 330  
Goshen, NY 10924



HON. CHRISTINE A. SPROAT  
Supreme Court Justice